

**KENTUCKY PERSONNEL BOARD
MINUTES OF JUNE 14, 2013**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on June 14, 2013, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Tommy W. Chandler, Member
Donald W. "Don" Blevins, Member
Ramona Herndon, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

2. **READING OF THE MINUTES OF REGULAR MEETING HELD MAY 10, 2013**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Mr. Hutcheson moved to approve the minutes, as submitted. Judge Chandler seconded, and the motion carried 7-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek advised that he, Mr. Crocker and some of the hearing officers attended the Kentucky Association of Administrative Adjudicators (KAAA) training on May 17, 2013, at the Kentucky History Center. They will also attend hearing officer training conducted by the Office of the Attorney General on June 21, 2013.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. **PERSONNEL CABINET'S REPORT**

The Hon. Dinah Bevington came forward to present the Personnel Cabinet's report.

Ms. Bevington reported that the Personnel Cabinet has redesigned their website, which was a two-year work-in-progress, and has an easier setup.

Ms. Bevington reported that the amended regulations which were approved by the Board have been filed with the Legislative Research Committee and will be heard in August.

At the conclusion of the Personnel Cabinet's report, Chairman Sapp called the parties forward for oral arguments.

5. ORAL ARGUMENTS

A. George Bean v. Office of the Attorney General

Present for oral argument were the Appellant, George Bean; and counsel for Appellee, the Hon. Morgan Ransdell. After presenting oral arguments, the parties answered questions from the Board.

B. Devenna Bales v. Cabinet for Health and Family Services

Present for oral argument were counsel for Appellant, the Hon. Paul Fauri; and counsel for Appellee, the Hon. Mary Tansey. After presenting oral arguments, the parties answered questions from the Board.

C. Donna Conlee v. Cabinet for Health and Family Services

Present for oral argument were counsel for Appellant, the Hon. Elliott Miller; and counsel for Appellee, the Hon. Marian Hogan. After presenting oral arguments, the parties answered questions from the Board.

D. James Tingle v. Justice and Public Safety Cabinet (Corrections)

Present for oral argument were the Appellant, James Tingle; and counsel for Appellee, the Hon. Angela Cordery. After presenting oral arguments, the parties answered questions from the Board.

E. John Veitch v. Public Protection Cabinet (Kentucky Horse Racing Commission)

Present for oral argument were counsel for Appellant, the Hon. Thomas Miller; and counsel for Appellee, the Hon. LaTasha Buckner, and Mr. Marc Guilfoil, Deputy Executive Director of the Kentucky Horse Racing Commission. After presenting oral arguments, the parties answered questions from the Board.

6. INVESTIGATIONS

Update on Department of Agriculture Investigation

Mr. Sipek advised that because of other duties (i.e. hearings, recommended orders, etc.) he does not have anything new to report to the Board.

7. CLOSED SESSION

Dr. Stevens moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Ms. Herndon seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 7-0. (11:45 a.m.)

Mr. Gillis moved to return to open session. Mr. Hutcheson seconded and the motion carried 7-0. (12:35 p.m.)

8. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. George Bean v. Office of the Attorney General (2011-188)

Mr. Hutcheson moved to note Appellant's exceptions and oral arguments and to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 7-0.

B. Devenna Bales v. Cabinet for Health and Family Services (2012-137)

Mr. Gillis moved to note Appellant's exceptions, Appellee's response (returned as untimely) and oral arguments and to accept the recommended order dismissing the appeal. Ms. Herndon seconded and the motion carried 7-0.

C. Donna Conlee v. Cabinet for Health and Family Services (2012-219)

Judge Chandler moved to note Appellee's exceptions, Appellant's Response and oral arguments and to accept the recommended order sustaining the appeal. Dr. Stevens seconded and the motion carried 7-0.

D. James Tingle v. Justice and Public Safety Cabinet [Corrections] (2012-192)

Judge Chandler moved to note Appellee's exceptions and oral arguments and to accept the recommended order sustaining the appeal to the extent of reducing a three-day suspension to a written reprimand. Mr. Blevins seconded and the motion carried 7-0.

E. John Veitch v. Public Protection Cabinet [Kentucky Horse Racing Commission] (2011-263)

Mr. Hutcheson moved to note Appellant's exceptions, Appellee's exceptions, Appellant's response, Appellee's response and oral arguments and to defer this matter to the next Board meeting. Mr. Gillis seconded and the motion carried 7-0.

F. Ruth Walker v. Cabinet for Health and Family Services (2009-283)

Mr. Hutcheson moved to note Appellee's exceptions and Appellant's response and to accept the recommended order sustaining the appeal. Ms. Herndon seconded and the motion carried 6-1, with Mr. Blevins opposing.

G. Aaron E. Harper v. Tourism, Arts and Heritage Cabinet [Parks] (2012-276)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 7-0.

H. Thomas Holliday v. Education and Workforce Development (2012-252)

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Judge Chandler seconded and the motion carried 7-0.

I. David Huff v. Tourism, Arts and Heritage Cabinet [Parks] (2012-275)

Mr. Blevins moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

J. Ray Sandy v. Justice and Public Safety Cabinet [Corrections] (2012-161)

Mr. Gillis moved to accept the recommended order sustaining the appeal to the extent of reducing a three-day suspension to a written reprimand. Mr. Hutcheson seconded and the motion carried 7-0.

K. Brenda Starr v. Auditor of Public Accounts (2012-254)

Mr. Gillis moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 7-0.

L. Jennifer Warford v. Energy and Environment Cabinet (2012-241)

Mr. Blevins moved to accept the recommended order dismissing the appeal. Ms. Herndon seconded and the motion carried 6-0, with Mr. Gillis recusing stating he has a relationship with a witness.

9. **WITHDRAWALS**

Mr. Hutcheson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Herndon seconded and the motion carried 7-0.

- A. Lisa Hulette v. Public Protection Cabinet
- B. Justin Morgan v. Energy and Environment Cabinet
- C. Vickie J. Pruitt v. Personnel Cabinet
- D. Darrell Sanderson v. Education and Workforce Development Cabinet
- E. Jeremy Bailey v. Personnel Cabinet
- F. Kenneth Gilliam v. Energy and Environment Cabinet
- G. Michael Milcznski v. Personnel Cabinet

10. **SETTLEMENTS**

Dr. Stevens moved to accept the settlements *en bloc* as submitted by the parties, and to sustain the appeals to the extent set forth in the settlements. Mr. Hutcheson seconded and the motion carried 7-0.

- A. Candy Bingham v. Justice and Public Safety Cabinet (Probation and Parole)
- B. Kalan Slattery v. Personnel Cabinet

11. **OTHER**

Mr. Sipek added that he wanted to follow-up on the matter of settlements as requested by Judge Chandler to look up the law as it pertains to the Personnel Board. Mr. Sipek stated that pursuant to 101 KAR 1:365, Section 6(8), "An agreed settlement shall be submitted in writing for review and final action by the board." Further, KRS 13B.070 allows for informal settlements.

The current process after an appeal is filed, the Agency and Appellant may agree to settlement. The settlement agreement is circulated and signed by the parties. The agreement is then sent over to the Personnel Cabinet for review to see if it meets statutory and regulatory requirements. If the agreement is approved by the Personnel Cabinet, Ms. Bevington will sign it. The settlement agreement will then be filed with the Personnel Board to be reviewed and approved by the Board. Mr. Sipek stated that this process is better than the parties reaching a private agreement and filing a withdrawal with the Personnel Board. Another advantage is that after a Final Order is issued by the Board, settlements can be further enforced in the Franklin Circuit Court, if necessary.

Mr. Sipek stated that the Board discussed having the Appointing Authority sign-off on settlements. The Personnel Cabinet is in agreement. Mr. Sipek stated that the Board can discuss amending the regulation.

Judge Chandler asked what happens if a settlement is rejected. Mr. Sipek responded that the process has been that the Board can make suggestions to the parties about changing the settlement; the appeal can be deferred for further pre-hearings; or the parties can go forward with an evidentiary hearing.

Chairman Sapp asked if there were any other matters to be discussed. There being no further business, Mr. Gillis moved to adjourn. Mr. Blevins seconded and the motion carried 7-0. (12:55 p.m.)

Wayne D. Sapp, Chairman

Larry B. Gillis, Vice Chairman

David B. Stevens, Member

David F. Hutcheson, Jr., Member

Tommy W. Chandler, Member

Donald W. Blevins, Member

Ramona Herndon, Member